

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

PERRY OVERTON,)
Plaintiff,)
v.)
THE UNIVERSITY OF TENNESSEE et al.,)
Defendants.)

No. 08-2796

ORDER ADOPTING UNITED STATES MAGISTRATE JUDGE'S REPORT AND RECOMMENDATION AND DENYING DEFENDANTS' MOTION TO DISMISS

Before the Court is the motion of Defendants Hershel P. Wall et al. (“Defendants”) filed January 25, 2010. (D.E. #31.) Defendants’ motion seeks dismissal of Plaintiff Perry Overton’s (“Plaintiff”) complaint with prejudice under Rule 37(b)(2)(A)(v) and Rule 41(b) of the Federal Rules of Civil Procedure. In the alternative, Defendants’ motion seeks an order compelling discovery and awarding sanctions.

The Court referred Defendants' motion to the United States Magistrate Judge. On March 18, 2010, the Magistrate Judge issued an order compelling Plaintiff to provide discovery and awarding sanctions to Defendants. On March 18th, the Magistrate Judge also issued a Report and Recommendation¹ recommending that Defendants' motion to dismiss be denied because, although Plaintiff has failed to cooperate in discovery, Plaintiff was not previously warned that failure to cooperate could lead to dismissal of his suit and less drastic sanctions have yet to be imposed.

¹ The Magistrate Judge's order compelling discovery and her Report and Recommendation were contained within the same document. (D.E. #33.)

No party filed objections to the Magistrate Judge's Report and Recommendation. The Court further notes that Plaintiff filed no response to Defendants' January 25th motion to dismiss and/or compel discovery. Having reviewed the Report and Recommendation in conjunction with the entire record in this case, the Court **ADOPTS** the Magistrate Judge's thorough and well-reasoned Report and Recommendation and **DENIES** Defendants' motion to dismiss. Like the Magistrate Judge, however, the Court expressly warns Plaintiff that further failure to cooperate in discovery will result in dismissal of his complaint with prejudice.

IT IS SO ORDERED, this the 6th day of April, 2010.

s/Bernice Bouie Donald
BERNICE BOUIE DONALD
UNITED STATES DISTRICT JUDGE